

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION**

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ALAN JOSEPH BAUER, Ph.D.; DOUGLAS S. RABIN,  
M.D.; VIVIAN STEIR RABIN; RODDY TEEPLE;  
ANDREW NEFF; NANCY NEFF; RICHARD  
SANDERS POLIN, M.D.; TAMMIE PUROW; MIMI  
JANKOVITS; and DAVID GENET,

Case No: 24-cv-10404

**AMENDED  
COMPLAINT**

Plaintiffs,

-against-

**Jury Trial Demanded**

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE (HARVARD CORPORATION); and THE  
HONORABLE AND REVEREND THE BOARD OF  
OVERSEERS,

Defendants.

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Plaintiffs, complaining of Defendants, by their attorneys, THE BERKMAN LAW  
OFFICE, LLC, alleges for their complaint, upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. “Jew hate and antisemitism is thriving on [Harvard’s] campus,”<sup>1</sup> making Harvard  
a “bastion of rampant anti-Jewish hatred and harassment.”<sup>2</sup> These are but some of the appalling

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<sup>1</sup> “Feeling Alone and Estranged, Many Jews at Harvard Wonder What’s Next,” *The New York Times*, December 16, 2023, available at: <https://www.nytimes.com/2023/12/16/us/jews-harvard-antisemitism-israel-war.html>.

<sup>2</sup> “Students Sue Harvard, Calling It a ‘Bastion’ of Antisemitism,” *The New York Times*, January 11, 2024, available at: <https://www.nytimes.com/2024/01/11/us/harvard-antisemitism-lawsuit.html>

descriptions of what has become of Harvard University (“Harvard”), supposedly recognized internationally as an elite educational institution with a purported commitment to diversity and inclusion.

2. Over the last several years and especially in recent months, Harvard has despicably failed to address, prevent, and rectify the prevalence of antisemitism, hate, and discrimination on its campus.

3. This is a civil action brought by Harvard alumni requesting an injunction ordering Harvard to take concrete and affirmative steps to end antisemitism on its campus and hold accountable those who allowed antisemitism to fester; seeking restitution for the devaluation of their Harvard degrees caused by Harvard’s abject failure to address its antisemitism problem; and seeking restitution of their tuition payments and donations obtained by Harvard through misrepresentation and fraud regarding its diversity, equity and inclusion policies.

4. Plaintiffs all attended Harvard for their higher education with the expectation that Harvard would strive to uphold its reputation as one of the highest-ranking universities in the world with a strong commitment to its values and with the expectation that Harvard would always be an institution of diversity, equity, inclusion, and tolerance based upon its published policies.

5. On October 7, 2023, some 3,000 terrorists crossed into Israel from the Gaza Strip, massacred 1,200 people, wounded thousands more and took 240 hostages back into the Gaza Strip (the “October 7 Attacks”). A majority of the victims of this terrorism were civilians, including, infants, women, children, and elderly, and mass rape of Israeli women has been documented. Simultaneously Hamas launched hundreds of rockets aimed at Israeli civilians. October 7, 2023 was the deadliest day for Jews since the Holocaust. Following the October 7 Attacks, Israel responded militarily by air and, eventually, with a ground invasion to defend Israelis, to destroy Hamas’ military capabilities in the Gaza Strip and to return all of the hostages.

6. The October 7 Attacks and Israel's response to it ignited Jewish hatred at Harvard that the university had already allowed to fester for years. Mobs of pro-Hamas students and faculty have rioted and marched on Harvard's campus, shouting antisemitic slogans and calling for the death of Jews and the destruction of Israel. Those mobs have harassed and assaulted fellow students and anyone on campus who they thought is Jewish or supports Israel. For days and weeks on end, those mobs occupied buildings, classrooms, libraries, student lounges, plazas, and study halls. Those mobs evolved into encampments on Harvard Yard starting on April 24, 2024 and continued for weeks on end disrupting educational activities and operations and graduations, demanding Harvard divest from companies tied to Israel, and shouting vitriolic slogans and chants at Jewish students. This hatred incubated, in part, via Harvard faculty, who have promoted antisemitism in their courses and via student organizations that have invited and lauded antisemitic speakers, spreading hate and conspiracies about the Jewish people and Israel.

7. While the campus has devolved over the years to a place of intolerance for Jewish students, Harvard has done nothing to address and halt this egregiousness and stop the rampant antisemitism on campus and in classrooms. Harvard, instead, has permitted, even sanctioned, pro-Hamas rallies and encampments at which antisemitic slogans were shouted and refused to enforce its policies to protect Jewish students. Harvard has hired professors who spread antisemitic propaganda and has ignored Jewish students' pleas for protection. Indeed, since the October 7 Attacks, Harvard has become one of the worst campuses for Jewish students. In an unrelated action, six current Harvard students have sued the university for its failure to protect them in the present antisemitic environment. On May 22, 2024, another lawsuit was filed against Harvard by

the Brandeis Center “for leaving ‘cruel anti-Semitic bullying, harassment, and discrimination, unaddressed for years, pre- and post-10/7.’<sup>3</sup>

8. Harvard’s transformation did not go unnoticed, as various businesses, companies, and law firms have stated that they will no longer hire from Harvard. The University has been shunned in many circles and vehemently criticized for allowing what has transpired on its campus. Large-scale donors have pulled their funding to Harvard.

9. Plaintiffs have been harmed as a direct result of Harvard’s abject failure to address and prevent antisemitism and the shameful harassment of Jewish students and those who dare speak out for them. The value of a Harvard degree has been significantly diminished, rendering it functionally damaged in the professional and academic spheres. Plaintiffs are in a situation they never imagined: they are ashamed to say they went to Harvard.

10. Plaintiffs have been harmed as a direct result of Harvard’s misrepresentation and fraud regarding its stated diversity, equity and inclusion policies. Had Plaintiffs known that the Harvard of today would become a place of vitriolic antisemitism, where the diversity, equity, and inclusions policies would not include Jewish students, Plaintiffs, who are all Jewish, would never have attended Harvard when they did, paid Harvard tuition, or paid a premium in tuition to attend Harvard.

11. Further, Plaintiffs have been harmed as a direct result of the misuse by Harvard of donations made by Plaintiffs to Harvard. Harvard’s gift policy on its alumni website (the “Gift Policy”) stresses academic freedom, the pursuit of knowledge from different viewpoints, and respecting rights, difference and dignity of individuals. When Plaintiffs made donations to Harvard, it was assumed that the funds would be used in accordance with Defendant’s Gift Policy

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<sup>3</sup> <https://brandeiscenter.com/harvard-sued-for-tolerating-rampant-and-pervasive-anti-semitism/>

and in an equitable and inclusive manner, not to promote policies that would specifically exclude Jewish students. Harvard misrepresented its Gift Policy and its diversity, equity and inclusion policies indicating it would be inclusive of Jewish students. Had Plaintiffs known that its policies would exclude Jewish students, they would have never donated to Harvard. The misrepresentation and the use of Plaintiffs' donations to promote antisemitism by Harvard directly harm Plaintiffs who are themselves Jewish and are emotionally distraught with the misuse of their funds.

12. Defendant Harvard has also been unjustly enriched from the tuition payments, premium in tuition to attend Harvard, and generous donations made by Plaintiffs to Defendant. Further, Harvard has breached its fiduciary duty to Plaintiffs with respect to such donations made by Plaintiffs.

13. Plaintiffs seek an injunction requiring Harvard to rehabilitate the value of a Harvard degree by taking remedial measures, including: (i) terminating deans, administrators, professors, and other employees who facilitate or fail to respond to the antisemitism permeating Harvard; and (ii) suspending or expelling immediately students who participate in hate speech and antisemitic conduct.

14. Plaintiffs also seek restitution for the financial costs associated with having attended Harvard and compensatory damages for the reputational damage to and thus reduced value of their Harvard degrees. Plaintiffs also seek restitution for their donations made to Harvard. Plaintiffs also seek punitive damages to address the systemic failure of the institution to provide an environment free of discrimination and prejudice and for the emotional distress inflicted upon Plaintiffs because their tuition payments and donations were made to a university where the environment is discriminatory towards Jews, a class to which Plaintiffs belong.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1332 due to diversity of citizenship among Plaintiffs and Defendant.

16. This Court has personal jurisdiction over Harvard because it is based and operates in Cambridge, Massachusetts.

17. Venue in the District of Massachusetts is proper under 28 U.S.C. § 1391 because it is the judicial district in which a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred and where Harvard is located.

### **PARTIES**

18. Defendants, the Harvard Corporation and Harvard Board of Overseers govern Harvard University (collectively "Harvard").

19. Harvard University is a private educational institution based in Cambridge, Massachusetts and is organized and existing under the laws of the State of Massachusetts.

20. Harvard College is a component of Harvard University that offers undergraduate, graduate, professional, and research programs in the fields of arts, science, medicine, business, design, and public health.

21. Harvard University has historically been an esteemed institution of higher education, renowned for its academic programs and prestigious reputation.

22. Plaintiffs are alumni of Harvard University.

23. Plaintiff ALAN JOSEPH BAUER, Ph.D. studied at Harvard University from 1983-1987 and received an A.B. degree in Biochemical Sciences, and is a resident of Jerusalem, Israel.

24. Plaintiff DOUGLAS S. RABIN., M.D. studied at Harvard University from 1969 - 1973 and received an A.B. degree in Economics, and is a resident of Jerusalem, Israel.

25. Plaintiff VIVIAN STEIR RABIN studied at Harvard University from 1977-1981 and from 1984-1986 and received AB and MBA degrees, and is a resident of Jerusalem, Israel.

26. Plaintiff RODDY TEEPLE studied at Harvard University from 1983-1988 and received an A.B., and is a resident of Laguna Beach, California.

27. Plaintiff ANDREW NEFF studied at Harvard University from 1980-1982 and received an MBA degree in, and is a resident of Jerusalem, Israel.

28. Plaintiff NANCY NEFF studied at Harvard University from 1979-1981 and received an MCP degree, and is a resident of Jerusalem, Israel.

29. Plaintiff RICHARD SANDERS POLIN, M.D. studied at Harvard University from 1983-1987, received an A.B. in Chemistry, and is a resident of Portland, Oregon.

30. Plaintiff TAMMIE PUROW studied at Harvard University from 1993-1996 and received a J.D. degree, and is a resident of the Fort Lauderdale, Florida.

31. Plaintiff MIMI JANKOVITS studied at Harvard University from 1985-1986 and received an M.P.A. degree, and is a resident of Hollywood, Florida.

32. Plaintiff DAVID GENET studied at Harvard University from 1984-1989, and received a D.M.D. degree in, and is a resident of Fort Lauderdale, Florida.

33. All of the Plaintiffs have been harmed by Harvard's misrepresentation of its diversity, equity and inclusion policies and its failure to address antisemitism on its campuses.

## **UNDERLYING FACTS**

### **A. The October 7 Attacks and Aftermath**

34. On October 7, 2023, some 3,000 Hamas terrorists crossed into Southern Israel from the Gaza Strip and proceeded to brutally massacre, rape, burn alive, and torture thousands of people, with 1,200 murdered, most of whom were civilians, including infants, women, children, and elderly. The terrorists also kidnapped more than 240 people and forcibly took them into the

Gaza Strip where they held them against their will in horrific conditions for more than 50 days in the case of those that have been rescued. Many hostages are still held in Gaza, presumably some dead. Hamas simultaneously launched thousands of rockets at civilian targets in Israel.

35. Following the October 7 Attacks, Israel responded with a military air and ground campaign in the Gaza Strip with the purpose of defending its citizens by destroying Hamas's military capabilities, eliminating or arresting Hamas operatives, and rescuing the hostages—albeit drawing criticism from those concerned over civilian casualties in Gaza.

36. Hamas has been listed by the State Department as a Foreign Terrorist Organization since October 8, 1997. Hamas has also been designated as a “Designated Foreign Terrorist Organization” by the State Department under Executive Order 13224 since October 31, 2001.

37. Hamas is a murderous terrorist organization, whose charter demands Israel's destruction and the murder of Jews worldwide.

## **B. Harvard's Historical Stance Towards Diversity, Equity and Inclusion**

38. While in the first half of the twentieth century, Harvard University was antisemitic in its admission policies, it had attempted to rehabilitate its antisemitic stance by instituting policies of tolerance, diversity, equity and inclusion over the past 60 or so years.

39. Harvard has historically issued numerous statements, studies and policies regarding diversity and inclusion.<sup>4</sup> From the 1960s to the 1990s, the period when Plaintiffs applied to and attended Harvard, Harvard University's engagement with diversity and inclusion evolved significantly, reflecting broader social movements and changing attitudes toward race, gender, and equity.

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<sup>4</sup> [https://inclusionandbelongingtaskforce.harvard.edu/files/inclusion/files/report\\_of\\_the\\_committee\\_to\\_study\\_the\\_importance\\_of\\_student\\_body\\_diversity\\_02-02-16.pdf](https://inclusionandbelongingtaskforce.harvard.edu/files/inclusion/files/report_of_the_committee_to_study_the_importance_of_student_body_diversity_02-02-16.pdf)



40. In the early 1960s, Harvard began to confront issues of racial inequality more directly, particularly influenced by the Civil Rights Movement. Harvard made public commitments to increasing the representation of Black students and faculty. During this period, Harvard was involved in broader educational initiatives like the Boston Freedom Schools, which were part of the civil rights struggle and aimed to address educational disparities for Black students.<sup>5</sup>

41. In the late 1960s, Harvard's administration started to implement specific policies to promote racial diversity. This included recruiting minority students and establishing support systems for them on campus. The Harvard Black Students Association, founded in 1967, became a crucial platform for advocating for Black students' rights and addressing systemic racism within the university.<sup>6</sup>

42. Throughout the 1970s, Harvard continued to expand its diversity efforts. Harvard responded to the demands of various student groups advocating for greater inclusivity. This era saw the establishment of ethnic studies programs and the hiring of more minority faculty members. Harvard also began to focus on gender diversity, influenced by the women's liberation movement, which highlighted issues of gender inequality and led to increased support for female students and faculty.<sup>7</sup>

43. During the 1980s, Harvard's commitment to diversity and inclusion was further institutionalized. In 1980, Harvard issued a report entitled "A Study of Race Relations at Harvard

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<sup>5</sup> <https://www.thecrimson.com/article/1964/2/27/20000-pupils-stay-out-of-class/>; <https://www.cambridge.org/core/journals/history-of-education-quarterly/article/boston-freedom-schools-as-places-of-possibility-for-reciprocal-integrated-education/EF46441E26E46A363678850D52974ABF>

<sup>6</sup> <https://guides.library.harvard.edu/c.php?g=1061363&p=7716356>

<sup>7</sup> [https://en.wikipedia.org/wiki/Second-wave\\_feminism](https://en.wikipedia.org/wiki/Second-wave_feminism)

College.”<sup>8</sup> Harvard launched various initiatives and programs aimed at creating a more inclusive campus environment. These included mentorship programs, cultural centers, and diversity training for faculty and staff and students. One such cultural center was the Harvard Foundation for Intercultural and Race Relations, which was established in 1981 “by the president and deans of the College with the aim to ‘improve relations among racial and ethnic groups within the University and to enhance the quality of our common life.’” To fulfill this mission, the Foundation sponsors events and activities designed to promote interracial and intercultural awareness within the Harvard community, ranging from student-led discussions on issues regarding diversity to ceremonies that honor individuals within and beyond the Harvard community who have made contributions to multiculturalism. The Foundation’s mission has expanded to also promote tolerance, acceptance, and inclusion of identifying factors outside of race and culture, including class, gender, religion, sexual orientation, and more.”<sup>9</sup>

44. During the 1990s, the university’s commitment to diversity and inclusion was strengthened even more. The Harvard Medical School (“HMS”) Minority Faculty Development Program (“MFDP”) was founded in 1990 to support the recruitment, retention, and advancement of underrepresented minority faculty at HMS.<sup>10</sup> Additionally, the Office for Equity, Diversity, Inclusion, and Belonging was established to create a cohesive and inclusive environment across Harvard’s campuses. It still exists today and offers various resources and supports initiatives that promote diversity and inclusion, such as training programs, workshops, and community-building

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<sup>8</sup> A Study of race relations at Harvard College, Harvard University Committee on Race Relations. / [Cambridge, Mass.: The University] 1980

<sup>9</sup> <https://harvardfoundation.fas.harvard.edu/welcome-harvard-foundation#:~:text=The%20Harvard%20Foundation%20was%20started,and%20activities%20designed%20to%20promote>

<sup>10</sup> <https://cff.hms.harvard.edu/about/administration#:~:text=Direction%20and%20administration%20of%20theat%20HMS%20and%20affiliated%20hospitals> .

events.<sup>11</sup> Throughout the 1990s, various schools within Harvard, including the Harvard Kennedy School and Harvard Law School, began integrating diversity and inclusion topics into their curricula and offering training programs for students and faculty to promote awareness and understanding of diversity issues.

45. Overall, Harvard's diversity and inclusion initiatives, policies, statements, and programming from 1960 to 1990 reflected a growing recognition of the need to address systemic inequalities and a commitment to creating a more inclusive and equitable educational environment purportedly for everyone.

46. Today, Harvard's diversity and inclusion statement on its website states: "We all belong here. Together, we strive to create an environment that values diversity, promotes an inclusive culture, and establishes a profound sense of belonging for each member of our community."

47. In addition to its stated diversity, equity and inclusion policies, Harvard has a "Gift Policy Guide" ("Gift Policy") which is posted on its alumni website.<sup>12</sup> It explicitly states that it solicits gifts from alumni to further support its equitable and diverse institution:

"Throughout its history, Harvard University has benefited from the generosity and foresight of philanthropists. The work of the institution—to expand and deepen knowledge, to advance teaching and learning, and to drive progress across many areas of human endeavor—would not be possible without the consistent commitment and thoughtful support of donors who have helped build and grow the University over centuries.

This document outlines the manner in which philanthropic gifts are considered, accepted, and administered within Harvard. Following are several broad considerations that guide the University's efforts to solicit and accept gifts, to agree to gift terms, to recognize donors, and to manage funds:

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<sup>11</sup> <https://edib.harvard.edu>

<sup>12</sup> [https://alumni.harvard.edu/sites/default/files/page/files/Gift\\_Policy\\_Guide\\_Overview.pdf](https://alumni.harvard.edu/sites/default/files/page/files/Gift_Policy_Guide_Overview.pdf)

## UPHOLDING ACADEMIC FREEDOM

The University maintains a fundamental and enduring commitment to academic freedom and the rigorous pursuit of knowledge across many different fields of inquiry and from many different points of view.

## ADHERING TO INSTITUTIONAL VALUES

The University is committed to respecting the rights, differences, and dignity of individuals; to demonstrating honesty and fair play in all dealings; and to pursuing excellence at all times in all aspects of its work.”

48. The Gift Policy ends with:

“Generosity has made Harvard University what it is today. By ensuring that every contribution is used wisely, effectively, and fairly, the University honors the aspirations and hopes of those who sought—and seek—to preserve its excellence and advance its mission in perpetuity.”

49. Despite Harvard’s active promotion of diversity and inclusion for the past 60 years aiming to be inclusive of everyone, disturbingly, when it comes to Jews, Harvard has not lived up to own its diversity and inclusion statements or policies.

### **C. Harvard Has a History of Antisemitism**

50. Harvard has long been fostering and permitting antisemitism. In the 1920s, it was official Harvard policy to “diminish the Jews” being admitted and restore Harvard as a “gentile” college. In 1922, then Harvard President Lowell noticed a rise in the number of Jews accepted at Harvard and proposed a quota of 15% Jewish students.<sup>13</sup> In a letter dated December 17, 1925, a Harvard alumnus lamented to President Lowell, that, upon attending a recent Harvard-Yale football game, “[t]here were Jews to the right of me, Jews to the left of me, in fact they were so obviously everywhere that instead of leaving the Yard with pleasant memories of the past I left

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<sup>13</sup> <https://www.timesofisrael.com/harvards-jewish-quotas-cited-in-us-supreme-courts-affirmative-action-ruling/>

with a feeling of utter disgust of the present and grave doubts about the future of my Alma Mater.”<sup>14</sup> President Lowell agreed that Harvard had a “Jew problem.”<sup>15</sup>

51. For several years, Harvard followed President Lowell’s antisemitic lead. In May 1939, Julian Lowell Coolidge, master of Lowell House at Harvard complained to then Harvard President Conant about “the vexing question of the number of Jews in Harvard College.”<sup>16</sup>

52. Jewish quotas at Harvard continued through the 1950s, with Jewish enrollment rebounding in the 1960s.<sup>17</sup> However, this rebound has reversed significantly over that past 20 years.

53. In the 1990s, Harvard’s student body was nearly a quarter Jewish. Those identifying as Jewish in Harvard’s 2023 class are only 5.3%.

54. For the last decade, Harvard has known of, tolerated and enabled antisemitism in manifold ways in direct contravention of its stated diversity, equity and inclusion policies as set forth throughout this complaint.

55. The AMCHA Initiative—a non-profit organization dedicated to documenting and combating antisemitism—released several alarming reports in recent years reflecting the systemic antisemitism at Harvard and even found that Harvard is the most antisemitic university in the United States.

56. An AMCHA Initiative report from 2014 explained how a leading Harvard newspaper—the Harvard Crimson—published editorials affirming that its board was “broadly and

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<sup>14</sup> [https://www.supremecourt.gov/DocketPDF/20/20-1199/173420/20210331104529484\\_Amicus%20brief.pdf](https://www.supremecourt.gov/DocketPDF/20/20-1199/173420/20210331104529484_Amicus%20brief.pdf) at 11.

<sup>15</sup> *Id.*

<sup>16</sup> <https://dash.harvard.edu/bitstream/handle/1/4669676/28synnott-withchanges.pages.pdf?sequence=1#:~:text=In%20various%20statements%20about%20its,%2C%20Jews%2C%20racial%20minorities%2C%20and>

<sup>17</sup> <https://www.thecrimson.com/article/2023/11/9/legacy-admissions-scrut/>

proudly supportive” of the Boycott, Divestment, Sanctions (“BDS”) mission and the activism of the Harvard College Palestine Solidarity Committee (“Harvard PSC”). The following month, 49 Harvard faculty signed a “statement” in support of the BDS movement. There is no BDS movement for any country other than Israel. In 2015 and 2016, the Center for Middle Eastern Studies at Harvard sponsored six BDS speaker events. BDS uses divisive and inaccurate terms like “apartheid,” “genocide,” “settler colonialist,” and “supremacists” to refer to various Israeli actions and policies, thereby demonizing the Jewish state and those who support its existence. Countries with truly appalling human rights records are not subjected to BDS treatment.

57. The Institute for the Study of Global Antisemitism and Policy (“ISGAP”) conducted a seven-year assessment of foreign funding of leading American universities by Middle Eastern autocratic regimes, foundations, and affiliated corporations. The ISGAP research was presented to the Department of Justice in July 2019, and showed that Harvard did not identify and report donations and contracts with foreign governments, including autocratic Middle Eastern regimes, amounting to millions. ISGAP found “a direct correlation between the funding of universities by Qatar and the Gulf States and the active presence at those universities of groups such as Students for Justice in Palestine (SJP), which foster an antisemitic and aggressive atmosphere on campus.”

58. A 2022 AMCHA report showed that Harvard ranked top in three measures of campus antisemitism among hundreds of colleges across America. Harvard had more incidents of antisemitism in each of three categories than any other school in 2021-2022.<sup>18</sup> The report also

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<sup>18</sup> The three categories are (1) denigration of Jewish students; (2) Jewish students feeling like they need to suppress their identity; and (3) Jewish students needing to redefine their Jewish identity to make it acceptable (for example, not being pro-Israel).

revealed that Harvard faculty played a significant role in fomenting and contributing to antisemitism.

**D. Harvard’s Campus Was Rife With Antisemitic and Anti-Israel Propaganda Even Before October 7, 2023**

59. On May 10, 2018, a swastika was discovered on a bulletin board at Harvard Public Health. Harvard took no disciplinary action in response. A few months later, on December 2, 2018, a man intentionally toppled the menorah at Harvard Chabad, a center of Jewish life and faith. Harvard did not condemn or punish the perpetrator.

60. Harvard PSC hosts an Annual “Israel Apartheid Week” which has historically featured various BDS supporters as speakers promulgating antisemitic rhetoric, blood libels, and conspiracy theories about Jews and Israel. During the 2017 Israel Apartheid Week, a Harvard dormitory was covered with mock detention notices targeting Jewish students for their alleged mistreatment of “Palestinians in Israel-Palestine.”

61. The 2021 Israel Apartheid Week featured Palestinian activist Yamila Hussein-Shannan, who blamed the oppression of Palestinian women on Israel’s “occupation” and declared that Zionism is a “white supremacist, European, patriarchal, heterosexist, you name it, . . . when you read Zionism, it is white supremacy.” The 2017 Israel Apartheid Week also featured Marc Lamont Hill, a former CNN commentator whom CNN fired for saying “from the river to the sea”—a call for the destruction of Israel and its inhabitants. Yet another featured panelist was Sumaya Awad, who has expressed support for violent protests in Israel and has promoted hatred against the Jewish state.

62. In May 2021, the building of Harvard Hillel—a Jewish on-campus organization—was vandalized twice. Masked individuals tied a Palestinian flag emblazoned with an anti-police

slogan to Hillel's door, after which Hillel's windows were shattered. While Harvard claims to have investigated these incidents, no one was ever disciplined.

63. In October 2021 and again in October 2022, Mohammed El-Kurd, a controversial Palestinian activist widely known for his antisemitism was invited to speak at an event hosted by PSC. The event focused on the BDS movement against the State of Israel. El-Kurd is famous for his demonization of Jews and blood libels that accuse Israelis of eating the organs of Palestinians and having a thirst for Palestinian blood.

64. In August 2022, Harvard PSC members disrupted Harvard's new student convocation by chanting and displaying a banner that read: "Harvard Supports Israeli Apartheid." Harvard did nothing about this hateful disturbance, and later shared on social media images from the convocation that prominently displayed the banner.

65. The 2023 Annual Israel Apartheid Week featured an "apartheid wall"—an art installation proclaiming that "[T]HERE IS NO ZIONIST STATE WITHOUT RACISM COLONIALISM ETHNIC CLEANSING" and "Boycott Divest Sanction," referring to the Jewish state.

66. Also in the Spring of 2023, a discrimination complaint was filed by three Israeli graduate studies against Professor Marshall Ganz, who did not permit them to use the term "Jewish democracy" for Israel as part of a project. Ganz compared a project promoting Jewish democracy to a project touting white supremacy. After a third-party investigator found that Ganz subjected the students to anti-Israel and antisemitic discrimination, Harvard did not publicly reprimand the professor. Instead, the professor was applauded for his civil rights work in the Harvard Gazette,



the university's official news website. The discrimination complaint was not mentioned in the piece.<sup>19</sup>

67. On September 21, 2023, Harvard Divinity School invited former Palestine Liberation Organization spokeswoman Diana Buttu to speak in Harvard Divinity School's main building at a screening of *Israelism*, a film that argues American Jews raise their children with pro-Israel indoctrination. Buttu claimed that Jews are trained to mistreat Palestinians, a behavior, she said, they learned facing Nazi extermination at Auschwitz.

68. Students for Justice in Palestine ("SJP")—which has a recognized chapter at Harvard in addition to its affiliate, Harvard PSC—likewise sponsors antisemitic events, hosts antisemitic speakers, and organizes BDS campaigns against Israeli businesses. SJP uses confrontational tactics to target Jewish students, including disrupting Jewish events and disseminating anti-Jewish propaganda laced with falsehoods and blood libels. A recent study by the Network Contagion Research Institute, an information verification think tank, found the presence of SJP on campuses "significantly correlated with antisemitic activity." Several leading universities, but not Harvard, have banned SJP and other such hate organizations from their campuses because of their harassment of Jewish students and support for Hamas.

#### **E. Harvard Allowed Terrifying Antisemitism to Balloon Since October 7, 2023**

69. Following the October 7 Attacks, antisemitism and Harvard reached unprecedented heights.

70. Initially, Harvard did not make a public statement about the October 7 Attacks and atrocities committed against Jews and Israelis on that day. And, ever since October 7, 2023,

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<sup>19</sup> <https://www.washingtontimes.com/news/2023/oct/30/harvard-lionized-professor-marshall-ganz-after-fin/>

Harvard has permitted daily antisemitic protests calling for the destruction of Israel during which students are verbally and physically harassed if they appear to be Jewish or supportive of Israel in any way.

71. On October 8, 2023, a coalition of student groups at Harvard signed a letter (the “October 8 Letter”) stating that they hold “the Israeli regime entirely responsible for all unfolding violence.” The letter was authored by PSC and co-signed by 33 other Harvard student organizations.<sup>20</sup>

72. The October 8 Letter received almost immediate backlash—but not from Harvard itself. A Computer Science professor, Boaz Barak, called for the removal of the organizations who signed the October 8 Letter. He said, “I have a lot of criticisms of Israeli policies, but everyone who signed this statement is condoning terrorism, rape, and murder.” Former University President Lawrence Summers called the letter “morally unconscionable.” He stated in a post on X, “In nearly 50 years of @Harvard affiliation, I have never been as disillusioned and alienated as I am today.” Several federal lawmakers also denounced the October 8 Letter.

73. On October 9, 2023, then-President Claudine Gay and other Harvard administrators issued a statement that they are “heartbroken by the death and destruction unleashed by the attack by Hamas.” The statement did not address the October 8 Letter. On October 10, Gay issued another statement in which she finally condemned the atrocities perpetrated by Hamas, but failed to condemn the students’ reprehensible October 8 Letter, noting only that they did not speak for Harvard or its leadership but affirming that they “have the right to speak for themselves.”

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<sup>20</sup> <https://www.theguardian.com/education/2023/oct/12/harvard-letter-israel-hamas-calls-name-students>

74. On October 14, 2023, hundreds of Harvard students gathered for a pro-Palestinian rally on the front steps of Harvard’s Widener Library. Organizers distributed cloth masks to protect the students’ identities. A member of Harvard’s African American Resistance Organization, which was a signatory on the October 8 Letter, delivered remarks comparing the Palestinian cause to the resistance movement in apartheid South Africa. He said, “The West vilified the people and labeled them terrorists...Today, we call them liberators.”

75. On October 18, 2023, hundreds of Harvard students marched to Harvard Business School to stage a “die-in” to demand an end to the war in Gaza. The protesters also harassed and assaulted Jewish students. A disturbing video from the die-in demonstration shows an Israeli Harvard Business school student assaulted by pro-Palestinian demonstrators screaming, “Shame, shame” in his face.<sup>21</sup> Several demonstrators, including an editor on the Harvard Law Review, brandished keffiyehs in the student’s face as they surrounded him and blocked his path. The video showed the student saying, “don’t grab me” and “don’t touch my neck.” Ibrahim Bharmal, a Civil Procedure teaching fellow, and Elom Tettey-Tamaklo, a residential proctor, were among the assailants. Harvard has not imposed any discipline on Bharmal and has done nothing to sanction Tettey-Tamaklo other than relieving him of his proctor responsibilities.

76. On November 27, 2023, Harvard sophomore Kojo Acheampong led students in chanting, “Long live Palestine; long live the intifada; intifada, intifada; globalize the intifada.” “Globalize the intifada” is a reference to violent Palestinian uprisings against Israel, specifically acts of terrorism against civilians by terrorist groups, including suicide bombings in buses and restaurants.

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<sup>21</sup> <https://twitter.com/MattWallace888/status/1719747295422365757>

77. On October 19, 2023, hundreds of protesters marched through Harvard’s main campus, chanting the genocidal “from the river to the sea,” accusing Israel of “genocide,” and demanding that Harvard “divest[] from Israeli apartheid that is funding genocide in Gaza.”

78. On October 30, 2023, PSC organized yet another take-over of a common area in one of Harvard’s buildings during which protesters accosted Jewish students. One of the protesters was Bharmal, who had assaulted a Jewish Harvard Business School student on October 18 and was recorded while doing so. Bharmal has not faced any disciplinary action to date.

79. On November 16, 2023, protesters held an event during class hours called “vigil for martyrs” during which they screamed “glory to the martyrs.”

80. On November 29, 2023, Harvard College students had classes disrupted by a coordinated protest using bullhorns to yet again blast calls to “globalize the intifada,” and demands for the elimination of the Jewish state “from the river to the sea.”

81. On November 29, 2023, the Office for Civil Rights of the U.S. Education Department announced an investigation into allegations of antisemitism at Harvard. Harvard has failed to adequately cooperate with the investigation and has been criticized for its unacceptable response to the investigation.<sup>22</sup>

82. On December 5, 2023, then-President Gay testified before the House Committee on Education and the Workforce. When questioned by Congresswoman Stefanik about whether calling for the genocide of Jews violates Harvard’s rules of bullying and harassment, Gay responded: “It can be depending on the context.” When pressed about whether such statements, when targeted at Jewish students and individuals, violated Harvard’s rules, Gay once again stated:

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<sup>22</sup> <https://www.dailywire.com/news/harvard-faces-threat-of-compulsory-measures-in-house-anti-semitism-probe>

“Again, it depends on the context.” Gay’s testimony caused a rippling shockwave of astonishment around the world.

83. In a video released on December 14, 2023, Rabbi Hirschy Zarchi, founder and president of Harvard Chabad, addressed the antisemitism on Harvard University’s campus and revealed that he had been instructed by the school to hide the Chanukah menorah after it was lit due to fears of vandalism or other criminal activities. The Rabbi explained how instead of making it clear that vandalizing the menorah would not be tolerated, Harvard canceled Jewish celebrations and warned Jewish students to conceal their Jewish identity.

84. In April 2024, college encampments had spread throughout the country and are continuing to this day. Jewish students have been met with genocidal chants—“one solution—Intifada revolution,” “from the river to the sea, Palestine will be free [of Jews],” “go back to Poland”—and have been assaulted and blocked by student occupiers from entering their own campuses. Jewish students are afraid to identify as Jews and fear being graded by pro-Hamas faculty. College rabbis have advised Jewish students to flee campus. These encampments transpired in Harvard Yard starting on April 24, 2024 and have continued for weeks on end, disrupting education activities, operations and graduations, demanding Harvard divest from companies tied to Israel, and shouting vitriolic slogans and chants at Jewish students. After Harvard Yard was occupied in April 2024 by a pro-Hamas mob, Harvard’s Chabad Rabbi posted on social media that he heard Jewish students who were trying to study for exams were “confronted with terrifying chants of globalize the Intifada—a call for the murder of Jews” and from their parents who are “frightened to learn that Hamas supporters are being allowed to camp out in

Harvard Yard.”<sup>23</sup> No other student group at Harvard has been made to live in such fear. Diversity, equity and inclusion at Harvard applies to every group except Jews.

85. On German university campuses in the 1930s, “[p]aramilitary student groups often interrupted lectures, provoked skirmishes, and physically intimidated Jewish students in actions tolerated by university administrations and encouraged by the Nazi party.”<sup>24</sup> Now, at Harvard, supporters of Hamas are disrupting campus life and harassing Jewish students in actions tolerated and enabled by the university administration, and they are being encouraged by the modern-day Nazis—Hamas and Iran’s Ayatollah Khamenei.<sup>25</sup>

86. In an article entitled, “Harvard’s Golden Age Turns to Mud - Being a Jew at Harvard Is Way Worse Than You Think,” Shabbos Kestenbaum, a Harvard graduate student, outlines the heightened antisemitism at Harvard following the October 7 Attacks, culminating at Harvard’s 2024 commencement. “‘I was called antisemitic by power and money because they want power and money.’ Thus said Harvard’s 2024 commencement speaker, Maria Ressa. Fittingly, her deployment of antisemitic tropes in front of tens of thousands of students, professors, and families at graduation last week encapsulated the absolute chaos that has engulfed Harvard University for the last year. Even as I took my seat at commencement, I was handed a newspaper . . . which accused Jews of racism for arguing that calls for an intifada are a direct call for violence. The 10-

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<sup>23</sup> Rabbi Hirshy Zarchi (@HarvardChabad), X (Apr. 24, 2024, 10:59 PM), <https://twitter.com/HarvardChabad/status/1783329906585194730>.

<sup>24</sup> Holocaust Encyclopedia, *University Student Groups in Nazi Germany*, <https://encyclopedia.ushmm.org/content/en/article/university-student-groups-in-nazi-germany>.

<sup>25</sup> Romina Ruiz-Goiriena, *Hamas and Iran Celebrate Anti-Gaza War Protests Taking US Colleges by Storm*, USA Today (Apr. 25, 2024 11:28 a.m.), <https://www.usatoday.com/story/news/politics/2024/04/24/hamas-iran-support-college-protests/73447123007>.

page paper went on to defend chants of ‘from water to water Palestine is Arab,’ ‘from the river to the sea.’ and ‘globalize the intifada.’”<sup>26</sup>

87. Shabbos Kestenbaum ends his article regarding the sad situation for Jews at Harvard. “I will conclude with these words: I have seldom experienced such disdain and contempt for a minority group as the way in which Harvard treats its Jewish student population. This is the reality of being a Jew at Harvard in 2024.”<sup>27</sup>

**F. Harvard Has Done Nothing to Stop the Antisemitism Being Openly Promulgated on Its Campus**

88. The Harvard administration has done nothing to squash the rampant antisemitism on campus and in classrooms in the aftermath of the October 7 Attacks.

89. Jewish students at Harvard have experienced emotional distress, academic setbacks, and a pervasive sense of marginalization due to the ongoing atmosphere of antisemitism on campus. In fact, six current Harvard students sued the university on January 10, 2024, stating that the university has become “a bastion of rampant anti-Jewish hatred and harassment.” *Alexander Kerstenbaum and Students Against Anti-Semitism v. President and Fellows of Harvard College*, Case No. 1:24-cv-10092 (D. Mass. 2024) (the “Student Complaint”). The Student Complaint is replete with detailed accounts of how Harvard administrators and faculty did nothing despite specific and repeated pleas by Jewish students to take action against disruptive protests during which Jewish students were harassed and against constant antisemitic rhetoric being publicized and promulgated across Harvard’s campus. The Student Complaint plaintiffs’ repeated pleas to Harvard faculty and staff demonstrate that Harvard has knowledge of, and, in fact, was

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<sup>26</sup> New & Politics, “Harvard’s Golden Age Turns to Mud - Being a Jew at Harvard is Way Worse Than You Think,” by **Shabbos Kestenbaum**, June 05, 2024.

<sup>27</sup> New & Politics, “Harvard’s Golden Age Turns to Mud - Being a Jew at Harvard is Way Worse Than You Think,” by **Shabbos Kestenbaum**, June 05, 2024.

complicit in fostering an environment of antisemitism, hate, and violence. “To fully appreciate how...empty Harvard’s pieties are, one need only imagine (or review Harvard’s history to see) what Harvard’s response would have been (or has been) if even a tiny fraction of the abuse Harvard’s Jews have endured had been directed against any other protected group. Harvard would not have stood for it for one minute.”<sup>28</sup>

90. On November 9, 2023, then-President Gay issued what she called “concrete steps” for “combating antisemitism” at Harvard. Gay’s “concrete steps” were comprised of only vague and unspecified plans to examine antisemitism and address its complex history, educate community members on antisemitism, make students aware of how to report bias, ensure physical and psychological safety, have community sessions with the diversity office, and look for external partnerships that would assist with efforts. Then, on November 13, 120 Harvard professors shockingly wrote a letter to Gay complaining that the plan to combat antisemitism was an assault on academic freedom. The letter asked Gay to resist calls to suspend Harvard PSC even though it had regularly engaged in activities that violate Harvard’s policies.

91. In January 2024, Harvard created a purported “Presidential Task Force on Combating Antisemitism.” Yet, incredibly, Harvard appointed as a co-chairman history professor, Derek Penslar, who teaches that Israel is “settler colonialist” and compares its establishment to that of France’s colonial takeover of Algeria.<sup>29</sup> In August 2023, Penslar signed a petition endorsing the conspiracy theory that Benjamin Netanyahu’s judicial reform proposal is a masked plan to

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<sup>28</sup> Plaintiffs’ Memorandum of Law in Opposition to Defendant’s Motion to Dismiss and Strike in re *Alexander Kestenbaum and Students Against Anti-Semitism v. President and Fellows of Harvard College*, Case No. 1:24-cv-10092 (D. Mass. 2024)

<sup>29</sup> <https://www.wsj.com/articles/harvard-antisemitism-task-force-derek-penslar-israel-hamas-67391846>; [https://www.wsj.com/articles/no-task-force-can-save-harvard-antisemitism-higher-education-db4caa72?mod=opinion\\_lead\\_pos5](https://www.wsj.com/articles/no-task-force-can-save-harvard-antisemitism-higher-education-db4caa72?mod=opinion_lead_pos5).



“ethnically cleanse all territories under Israeli rule of the Palestinian population.” In early January, before he was named co-chair of the “Presidential Task Force on Combating Antisemitism,” Penslar went as far as to accuse “outsiders” of “exaggerate[ing] [the] scope” of Harvard’s antisemitism problem.<sup>30</sup>

92. On May 22, 2024, The Louis D. Brandeis Center for Human Rights Under Law filed a lawsuit against Harvard in the U. S. District Court for the District of Massachusetts, alleging that Harvard has violated numerous of its own policies as well as Title VI of the Civil Rights Act of 1964. According to the complaint, “when Harvard is presented with incontrovertible evidence of anti-Semitic conduct, it ignores and tolerates it. Harvard’s permissive posture towards anti-Semitism is the opposite of its aggressive enforcement of the same anti-bullying and anti-discrimination policies to protect other minorities.”<sup>31</sup>

93. Concerning the weeklong encampments starting in April 2024, Shabbos Kestenbaum writes: “Although the participants used bolt cutters in an attempt to break open Harvard’s gates, depicted our Jewish President as a devil replete with horns and a tail, violated all time, place, and manner restrictions, called for the violent destruction of the Jewish state, and established a self-appointed security system that monitored and recorded Jews like me on our way to class, they were handsomely rewarded. In exchange for packing up their foul-smelling tents and open-air laundry, all graduate and almost all undergraduate students had their suspensions revoked. The encampment leaders will meet with senior university officials to discuss a Palestinian studies department, and the Harvard Management Corporation, which oversees Harvard’s \$50 billion

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<sup>30</sup> <https://jewishinsider.com/2024/01/new-harvard-antisemitism-task-force-under-fire-for-controversial-co-chair/>

<sup>31</sup> <https://brandeiscenter.com/legal-claims-against-harvard-university/>

endowment, will invite them for a seat at the table to discuss divestment, and President Garber personally asked for reinstatements and an expeditious disciplinary process.”<sup>32</sup>

94. Kestenbaum continues to write: “In fact, although the reports found that a Jewish student was spat on, an Israeli student was asked to leave class as her nationality made classmates ‘uncomfortable,’ another Israeli was assaulted at the business school, a staff member taunted me with a machete and challenged me to debate the Jewish involvement of the 9/11 terrorist attacks, Harvard didn’t acknowledge these incidents publicly or failed to address them for months. On the contrary, Harvard recently announced its policy of neutrality, refraining from issuing statements pertaining to public policy or affairs. Just the day before this announcement, the Harvard Palestine Solidarity Committee . . . called for escalating protests to an ‘open intifada in every capital and city.’ Although this university has made it its business to opine on all societal issues from George Floyd to Ukraine, open threats against Jewish students will no longer be denounced.”<sup>33</sup>

**G. Employers Stated Their Intent Not to Hire Harvard Graduates Anymore; Harvard Degrees Are Devalued**

95. Various business, companies, law firms, and other employers have publicly announced they will no longer hire Harvard graduates following the events and incidents that transpired at Harvard after the October 7 Attacks.

96. For example, several prestigious law firms stated they would not participate in Harvard’s on-campus interviewing program, which is the main way for Harvard law students to get hired by such firms. Several law firms also rescinded outstanding offers to students who were

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<sup>32</sup> New & Politics, “Harvard’s Golden Age Turns to Mud - Being a Jew at Harvard is Way Worse Than You Think,” by **Shabbos Kestenbaum**, June 05, 2024.

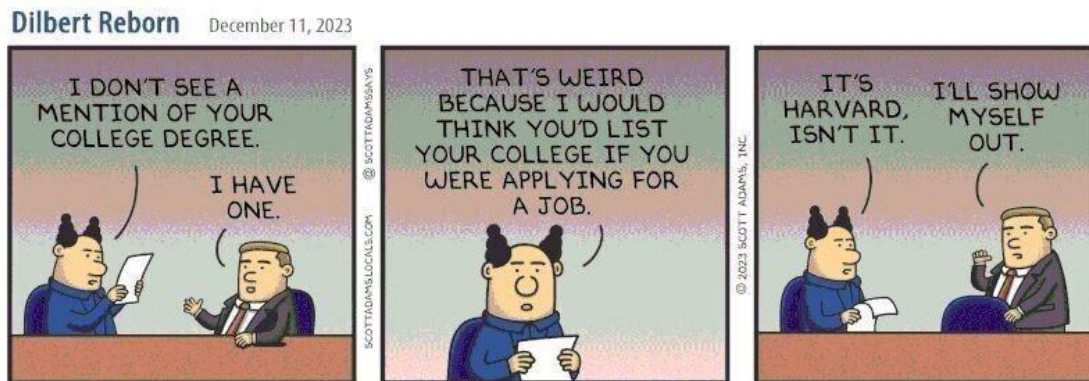
<sup>33</sup> *Id.*

members of the organizations that signed on to the infamous October 8 Letter blaming Israel for the atrocities committed by Hamas.

97. The CEOs of companies and hedge funds, including Sweetgreen and EasyHealth, have demanded that Harvard release the names of students who signed onto the October 8 Letter so that they could blacklist them from any recruiting or hiring efforts. Even those students and Harvard graduates who did not sign onto the letter are bound to face obstacles in the job market.

98. Harvard has been ridiculed publicly and continues to be shunned with every day that passes. In the words of a Wall Street Journalist and Harvard graduate: “I paid good money for my Harvard master’s degree. My principal is dwindling by the day. My children aren’t applying to Harvard[.]”<sup>34</sup>

99. The below cartoons summarize the current sentiment against Harvard in the professional world.



*Cartoon publicized on X by Scott Adams, December 11, 2023<sup>35</sup>*

<sup>34</sup> [https://www.wsj.com/articles/no-task-force-can-save-harvard-antisemitism-higher-education-db4caa72?mod=opinion\\_lead\\_pos5](https://www.wsj.com/articles/no-task-force-can-save-harvard-antisemitism-higher-education-db4caa72?mod=opinion_lead_pos5)

<sup>35</sup> <https://twitter.com/ScottAdamsSays/status/1734245097183879326/photo/1>



*Cartoon publicized by Steve Kelley on December 12, 2023.<sup>36</sup>*

100. U.S. Senator John Fetterman disavowed his alma mater, Harvard University, while receiving an award at Yeshiva University's commencement ceremony on May 29, 2004. "I have been profoundly disappointed," he said, mentioning "Harvard's inability to stand up for the Jewish community after October 7." He then removed a red stole from his shoulders, from Harvard's traditional graduation robes. "I do not fundamentally believe that it's right for me to wear this today," he said to applause.<sup>37</sup>

101. People have explained that while other universities have had similar antisemitism problems, Harvard "ought to be" better. Indeed, given its persistent ranking among the top three universities in the United States for an undergraduate degree and among the top five for a law degree or MBA, Harvard must hold itself to a higher standard than other universities. In fact, in its stated Gift Policy with alumni, Harvard admittedly holds itself to a higher standard by ending with

<sup>36</sup> <https://www.creators.com/read/steve-kelley/12/23/361669>

<sup>37</sup> <https://www.timesofisrael.com/at-yeshiva-university-commencement-john-fetterman-disavows-his-alma-mater-harvard/>

“the University honors the aspirations and hopes of those who sought—and seek—to preserve its excellence and advance its mission in perpetuity.” It has failed to do so and caused severe repercussions for its alumni to whom Harvard made a commitment when it enrolled them. Harvard Alumni Association (HAA) website specifically describes the relationship between Harvard and its graduates as “a lifelong journey with countless avenues to explore.” It continues, “Harvard is here for you during every stage in your career.” HAA further states, “As a Harvard alumnus/a, you are entitled to benefits and services from across the University...”

102. Harvard has consistently prided itself on being a university of tolerance, acceptance, diversity, and inclusion. Harvard’s diversity and inclusion statement on its website states: “We all belong here. Together, we strive to create an environment that values diversity, promotes an inclusive culture.” This was also Harvard’s mission when Plaintiffs attended Harvard and donated to Harvard. Harvard has abjectly failed in this mission when applied to Jewish students which has caused severe repercussions for Harvard alumni who would never had attended Harvard or donated to Harvard had they known that its mission would not apply to Jewish students.

### **COUNT I** ***(Breach of Contract)***

103. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

104. Plaintiffs have an implied contractual relationship with Harvard by virtue of their enrollment at Harvard and graduation from Harvard’s programs. This student-university contract is created both explicitly and implicitly through handbooks, regulations, codes, policies, and procedures promulgated by Harvard, as well as through Plaintiffs’ enrollment at Harvard. Plaintiffs tuition payments to Harvard constitute consideration requiring it to uphold its end of the contract.

Plaintiffs paid a premium to attend Harvard and forewent attendance at other universities which have not permitted and are not permitting antisemitism to thrive on their campuses.

105. Defendant Harvard impliedly committed and agreed to uphold a certain standard of higher education and reputability such that Plaintiffs would enjoy the life-long prestige of having graduated from Harvard.

106. Harvard breached and continues to breach its contractual obligation to Plaintiffs by failing to adequately address antisemitism on its campus. Harvard has directly caused the value and prestige of Plaintiffs' Harvard degrees to be diminished and made a mockery out of Harvard graduates in the employment world and beyond. The value of a Harvard degree is measured by the university's standing today and not judged by the year in which an applicant for a job graduated.

107. As a result of Harvard's breach, Plaintiffs have been damaged and continue to sustain damages in an amount to be determined at trial.

108. Further, Plaintiffs have an implied contractual relationship with Harvard by virtue of their donations made to Harvard as alumni. When Plaintiffs made alumni donations to Harvard, a contract was created implicitly that the donations would be used in a fair and equitable manner and in accordance with Harvard's diversity, equity, and inclusion policies and its Gift Policy which outlines the manner in which gifts are administered – *“promoting academic freedom and different points of view, and adhering to the institutional values of respecting the rights, differences, and dignity of individuals and demonstrating honesty and fair play in all dealings.”* When Plaintiffs made alumni donations to Harvard, they reasonably relied on the assumption that their donations would be used in an equitable and inclusive manner and not to promote policies that would specifically exclude Jewish students. Defendant breached its implied contract with Plaintiffs by utilizing donations in contravention of its diversity, equity and inclusion policies as well as its Gift Policy. Plaintiffs have been harmed as a direct result of the misuse by Harvard of donations made

by Plaintiffs to promote antisemitism. This misuse of funds directly harmed Plaintiffs who are themselves Jewish, would never donate money to an antisemitic organization, could have instead used such donations to help organizations which combat antisemitism, and are emotionally distraught with the misuse of their funds.

## **COUNT II**

### ***(Breach of Implied Covenant of Good Faith and Fair Dealing)***

109. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

110. Defendant Harvard breached the implied covenant of good faith and fair dealing implied in its contract with students who become alumni such as Plaintiffs. Implied in Harvard's contract with its students and alumni is that it will act in good faith to uphold the values and morals that historically made it an elite institution and eliminate, or at least, not condone antisemitism and harassment. Also implied in Harvard's contract with its students and alumni is that it will uphold a certain standard of higher education and reputability. HAA promises, "Through the Harvard Alumni Association (HAA) and each of Harvard's Schools, alumni like you have access to opportunities to expand your network, meet professionals in your field, and grow your skill set."

111. Harvard breached and continues to breach its implied covenant of good faith and fair dealing by failing to adequately address antisemitism on its campus and thereby destroyed Plaintiffs' reasonable expectations regarding the fruits of the contract.

112. Additionally, Defendant Harvard breached the implied covenant of good faith and fair dealing implied in its diversity, equity, and inclusion policies and its Gift Policy with alumni donors. Implied in Harvard's Gift Policy with alumni donors is that it will act in good faith to uphold the values stated in its Gift Policy. Defendant's Gift Policy outlines the manner in which gifts are administered – "promoting academic freedom and different points of view, and adhering



to the institutional values of respecting the rights, differences, and dignity of individuals and demonstrating honesty and fair play in all dealings.” Harvard breached and continues to breach its implied covenant of good faith and fair dealing by failing to comply with its Gift Policy and its diversity, equity and inclusion policies by condoning antisemitism on its campus.

113. As a result of Harvard’s breach, Plaintiffs have been damaged and continue to sustain damages in an amount to be determined at trial.

**COUNTS III & IV**  
***(Fraud and Misrepresentation under Common Law and Massachusetts General Business Law)***

114. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

115. Defendant is liable to Plaintiffs for fraud under common law and under the General Business Law of Massachusetts.

116. Defendant Harvard has misrepresented its diversity, equity and inclusion policies throughout the years, including when Plaintiffs applied to and attended Harvard. Its policies and statements seemingly “values diversity” and “promotes an inclusive culture” but not when applied to Jewish students. Its policies are antisemitic and lack equity and diversity. Dating as far back as the 1920s, there has been a long-standing and demonstrable condoning by Harvard of antisemitism against a class of individuals of Jewish descent, to which Plaintiffs belong, despite its long-standing proclamations of tolerance and diversity. This antisemitism at Harvard has reached an all-time high this past decade and, particularly, after October 7, 2023.

117. Defendant Harvard knowingly acted against its diversity, equity and inclusion policies by allowing antisemitism to exist on campus. Defendant knew that its statements over the years regarding equity and diversity were false when applied to Jewish students as evidenced by



the fact that they have condoned antisemitic incidents and, for several years, have acted deliberately indifferent to the antisemitism festering on campus. Defendant never intended to apply its policies to Jewish students even though Defendant fraudulently stated that such policies were to be applied to all students. This deliberate indifference has been exacerbated since the October 7 Attacks as antisemitic incidents at Harvard have heightened to extreme levels. Harvard has failed to take disciplinary actions even following purported investigations and meetings with Jewish students. Harvard has merely paid lip service that failed to meaningfully acknowledge the antisemitism. Furthermore, Harvard's lack of response was not just ineffective but dangerous as it led to increased antisemitism since it was obvious there were no repercussions for antisemitic acts on campus. It is obvious that Defendant Harvard knew that its diversity, equity and inclusion statements were false when applied to Jews.

118. Plaintiffs were induced to attend Harvard based upon its supposed policy of equity and inclusion. Had Plaintiffs known that Harvard would become a place of vitriolic antisemitism where antisemitic incidents were condoned, Plaintiffs, who are all Jewish, would have never attended Harvard.

119. Plaintiffs would not have applied for admission to Harvard or agreed to pay the tuition and fees or the premium in tuition to attend the "prestigious" Harvard had they known the truth that Harvard's equity and diversity policies did not include Jewish students like the Plaintiffs. Plaintiffs could have attended universities with lower tuition or received scholarships from other universities. As a result of Harvard's breach, Plaintiffs have been damaged in an amount to be determined at trial.

120. Further, Defendant Harvard misrepresented to Plaintiffs how donations would be used by Harvard. Defendant Harvard throughout the years had diversity, equity, and inclusion policies in effect. Furthermore, Defendant has a published "Gift Policy Guide" on its alumni

website which outlines the manner in which gifts are administered – “promoting academic freedom and different points of view and adhering to the institutional values of respecting the rights, differences, and dignity of individuals and demonstrating honesty and fair play in all dealings.” When Plaintiffs made any donations to Harvard, Plaintiffs reasonably relied on the assumption that the funds would be used in an equitable and inclusive manner and in accordance with its Gift Policy, not to promote policies that would specifically exclude Jewish students. Harvard knowingly misrepresented its Gift Policy indicating it would promote academic freedom and different points of view and respect the rights, differences, and dignity of individuals. Instead, alumni donations have supported and funded antisemitism on campus. Defendant Harvard also knowingly misrepresented its diversity, equity and inclusion policies. Neither policy was inclusive of Jewish students. Had Plaintiffs known that Defendant Harvard’s Gift Policy and diversity, equity and inclusion policies would exclude Jewish students, they would have never donated to Harvard. Had Plaintiffs known that their donations were being used to fund antisemitism at Harvard, they would have never donated to Harvard. The misrepresentation and the use of Plaintiffs’ donations to promote antisemitism by Harvard directly harm Plaintiffs who are themselves Jewish and are emotionally distraught with the misuse of their funds. As a result of Harvard’s breach, Plaintiffs have been damaged in an amount to be determined at trial.

**COUNT V**  
***(Unjust Enrichment)***

121. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

122. Defendant Harvard has been unjustly enriched by receiving tuition payments at a premium and alumni donations. Harvard knows that it can charge a premium in tuition because it is a “prestigious” university and can count on its alumni donors to donate to Harvard because of

its “prestige.” Harvard, as the recipient of these funds, undoubtedly has knowledge and appreciation of these benefits.

123. Plaintiffs have suffered a loss and detriment corresponding to the value of the tuition they had to pay to Harvard at a premium to attend Harvard and to the value of their donations made to Defendant. Furthermore, Plaintiffs have suffered a loss and detriment because they donated to an antisemitic university, contrary to the Plaintiffs’ values and intentions.

124. The enrichment of Defendant is unjust because it occurred at the expense of the Plaintiffs under circumstances that make it inequitable for Harvard to charge tuition at a premium and to retain the Plaintiffs’ donations. Plaintiffs had a reasonable expectation that their donations and tuition payments would not support an institution with antisemitic practices. Plaintiffs were unaware of the festering antisemitism at Harvard at the time of their tuition payments and donations and would have never paid Harvard the premium tuition or made such donations if they were aware of it. It was inequitable for Harvard to charge a premium in tuition because, with antisemitism festering, it was not a premier institution, and it would be inequitable for Harvard to retain the donations under these circumstances because such retention is in contravention of the Plaintiffs’ values and is a betrayal of trust.

125. As a result of Harvard’s unjust enrichment, Plaintiffs have been damaged in an amount to be determined at trial.

**COUNT VI**  
***(Breach of Fiduciary Duty)***

126. Plaintiffs repeat and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth herein.

127. Defendant Harvard owes Plaintiffs a fiduciary duty. A fiduciary relationship is one founded on the trust and confidence reposed by one party in the integrity and fidelity of another.

Given that alumni donate to Harvard with the trust and confidence that Harvard will use the donations with integrity and in a manner consistent with its mission and values as expressed in its diversity, equity and inclusions policies and in its Gift Policy, a fiduciary relationship exists between Defendant Harvard and Plaintiffs who donated to Harvard.

128. Defendant Harvard has breached its fiduciary duty to Plaintiffs because Plaintiffs donated to Harvard with an implicit trust that Harvard would adhere to basic ethical standards, including not supporting antisemitism, when administering funds donated to Harvard. Harvard, through its stated Gift Policy and stated diversity, equity, and inclusion policies, explicitly reinforced its ethical commitments of diversity and inclusion. Plaintiffs relied on these ethical commitments when making their donations to Harvard. Defendant did not adhere to their Gift Policy and diversity, equity, and inclusion policies when it came to Jewish students and acted directly against the donor Plaintiffs' interests with its antisemitism. Defendant breached its fiduciary duty to Plaintiffs when unethically utilizing their donations to support an antisemitic campus environment.

129. Plaintiffs have suffered a loss and detriment corresponding to the value of their donations made to Defendant. Furthermore, Plaintiffs have suffered a loss and detriment because their donations were used to fund an antisemitic university, contrary to the Plaintiffs' values and intentions. Plaintiffs have also been emotionally harmed with the knowledge that they have donated to a university that has condoned antisemitism.

130. As a result of Harvard's breach of fiduciary duty, Plaintiffs have been damaged in an amount to be determined at trial.

**WHEREFORE**, Plaintiffs respectfully request that this Court grant the following relief:

(1) Injunctive relief requiring Harvard to: (1) take disciplinary measures, including the termination of administrators, professors, faculty, and other employees responsible for antisemitic

propaganda, discrimination, and harassment, whether because they engage in it or permit it; (ii) disciplinary measures, including suspension or expulsion, of students who engage or have engaged in antisemitic conduct.

(2) Monetary damages in the form of restitution for the financial costs associated with having attended Harvard University, plus interest, to be determined at trial;

(3) Monetary damages in the form of restitution for the donations made to Harvard University, plus interest, to be determined at trial.

(4) Compensatory damages for the reputational damage to Plaintiffs' Harvard degrees and to Plaintiffs for having such degrees, to be determined at trial;

(5) Punitive damages to address Harvard's systemic failure to provide an environment free of discrimination and prejudice, to be determined at trial;

(6) Punitive damages to address Harvard's fraud and misrepresentation with respect to its diversity, equity, and inclusion policies;

(7) Reasonable costs and attorneys' fees; and

(6) Such other further relief that this Court may deem appropriate.

### **JURY DEMAND**

Plaintiffs hereby demand a trial by jury of all issues.

Dated: Brooklyn, New York  
June 21, 2024

Yours,

THE BERKMAN LAW OFFICE, LLC  
*Attorneys for Plaintiff*

by: /s/ Robert J. Tolchin  
Robert J. Tolchin (*pro hac vice*)  
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